

judicial action with respect to any written determination shall be commenced under section 6110(h)(4) by any person who has received a notice with respect to the written determination under paragraph (b)(2)(v) of this section.

(v) *Required notice.* If a proceeding is commenced under section 6110(h)(4) with respect to any written determination, the Secretary shall send notice of the commencement of the proceeding to any person to whom the written determination pertains. No notice is required to be sent to persons who have filed the petition that commenced the proceeding under section 6110(h)(4) with respect to the written determination. The notice shall be sent, by registered or certified mail, to the last known address of the persons described in this paragraph (b)(2)(v) within 15 days after notice of the petition filed under section 6110(h)(4) is served on the Secretary. For further guidance regarding the definition of last known address, see § 301.6212-2.

(vi) *Intervention.* Any person who is entitled to receive notice under paragraph (b)(2)(v) of this section has the right to intervene in any action brought under this paragraph (b)(2). If appropriate, this person shall be permitted to intervene anonymously.

(vii) *Background file documents.* The following qualifications of the rules in § 301.6110-5(b) apply with respect to the restraint of disclosure of background file documents related to written determinations to which this section applies. First, the administrative remedies described in §§ 601.105 (b)(5)(iii)(i) and 601.201(e)(11) of this chapter do not apply. Second, the rule in §§ 601.105(b)(5)(vi)(f) and 601.201(e)(16) that the Internal Revenue Service will not consider the deletion of material not proposed for deletion prior to the issuance of the written determination does not apply.

(3) *Time at which open to public inspection*—(i) *General rule.* Except as otherwise provided in paragraph (b)(3)(ii) of this section, the text of any written determination open to public inspection or available for inspection upon written request under section 6110(h) shall be made open to or available for inspection no earlier than 90 days and no

later than 120 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required under section 6110(h)(4). However, if an action is brought under section 6110(h)(4) to restrain disclosure of any portion of a written determination, the disputed portion of that written determination shall be made open to or available for inspection under paragraph (b)(3)(ii) of this section.

(ii) *Limitation on account of court order.* The portion of the text of any written determination that was subject to an action under section 6110(h)(4) to restrain disclosure in which the court determined that the disclosure should not be restrained shall be made open to or available for inspection within 30 days of the date that the court order becomes final. However, in no event shall that portion of the text of that written determination be made open to or available for inspection earlier than 90 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required by section 6110(h)(4) and paragraph (b)(1) of this section. This 30-day period may be extended for such time as the court finds necessary to allow the Commissioner to comply with its decision. Any portion of a written determination which a court orders open to public inspection or subject to inspection upon written request under section 6110(f)(4) shall be open or subject to inspection within such time as the court provides.

(iii) *Background file documents.* The rules in § 301.6110-5(c)(2)(ii) do not apply with respect to the time at which background file documents related to written determinations to which this section applies are subject to inspection.

[T.D. 7548, 43 FR 20791, May 15, 1978, as amended by T.D. 8939, 66 FR 2819, Jan. 12, 2001]

§ 301.6110-7 Miscellaneous provisions.

(a) *Disposition of written determinations and background file documents*—(1) *Reference written determinations.* The Internal Revenue Service shall not dispose of any reference written determinations or related background file

documents. The Commissioner may reclassify reference written determinations as general written determinations if the classification as reference was erroneous or if the Commissioner determines that such written determination no longer has any significant reference value. Notwithstanding the preceding sentence, the Commissioner shall not classify as a general written determination any written determination which is determined to be the basis for a published revenue ruling unless such revenue ruling is obsoleted, revoked, superseded or otherwise held to have no effect.

(2) *General written determinations.* The Internal Revenue Service may dispose of general written determinations and any background file document relating to such written determination pursuant to its established records disposition procedures. Disposition of a written determination shall not occur earlier than 3 years after the date on which such written determination is made open to public inspection or available for inspection upon written request. Disposition of a background file document shall not occur earlier than 3 years after the date on which the related written determination is made open to public inspection or available for inspection upon written request.

(b) *Precedential status of written determinations open to public inspection.* A written determination may not be used or cited as precedent, but the rule set forth in this paragraph shall not apply to change the precedential status, if any, of written determinations issued with respect to taxes imposed by subtitle D of the Internal Revenue Code of 1954.

(c) *Civil remedies—(1) Liability for failure to make deletions or to conform to time limitations—(i) Creation of remedy.* An exclusive remedy against the Commissioner shall exist in the Court of Claims for—

(A) The person to whom the written determination pertains whenever the Commissioner fails to act in accordance with the time requirements of section 6110(g), and

(B) The person to whom the written determination pertains and any person identified in such written determina-

tion whenever the Commissioner fails to make deletions required by section 6110(c) if as a consequence of such failure there is disclosed the identity of such person or other information with respect to such person that is required to be deleted pursuant to section 6110(c).

(ii) *Limitations.* The remedy provided in paragraph (c)(1)(i) of this section for failure to make deletions shall be available only if—

(A) The failure of the Commissioner to make the deletions required by section 6110(c) is intentional or willful,

(B) The Commissioner fails to make any deletion required by section 6110(c) which the Commissioner has agreed to make, or

(C) The Commissioner fails to make any deletion which a court has ordered to be made pursuant to section 6110(f)(3).

(iii) *Damages.* In any suit brought pursuant to paragraph (c)(1)(i) of this section in which the court determines that an employee of the Internal Revenue Service intentionally or willfully failed to make a deletion required by section 6110(c), or intentionally or willfully failed to act in accordance with the time requirements of section 6110(g), the United States shall be liable, to the person described in paragraph (c)(1)(i) of this section who brought the action, in an amount equal to the sum of—

(A) Actual damages sustained by such person but in no case shall such person be entitled to receive less than the sum of \$1,000.

(B) The costs of the action, and

(C) Reasonable attorney's fees as determined by the court.

(2) *Liability for making additional disclosure of information.* The Commissioner shall not be liable for making any additional disclosure ordered pursuant to an action described in § 301.6110-5(d)(2) if the notice required by § 301.6110-5(d)(4) is sent.

(3) *Obligation to defend action for additional disclosure.* The Commissioner shall not be required to defend any action brought to obtain additional disclosure pursuant to section 6110(f)(4) if the notice required by § 301.6110-5(d)(4) is sent.

(4) *Obligation to make deletions.* The Commissioner shall be obligated to make only those deletions required by section 6110(c) which he has agreed to make, those which a court has ordered to be made pursuant to § 301.6110-5(b)(2) and those the omission of which would be intentional or willful.

(d) *Fees*—(1) *General rule*—(i) *Copies.* The Commissioner may prescribe fees pursuant to § 607.702(f)(4) of this chapter for the costs of furnishing copies of material open to public inspection or subject to inspection upon written request pursuant to section 6110.

(ii) *Preparation of information available upon request.* The Commissioner may prescribe fees pursuant to § 601.702(f) of this chapter for the costs of searching for and making deletions from any written determinations and background if documents that are subject to inspection only upon written request pursuant to § 301.6110-1(b).

(2) *Reduction or waiver of fees*—(i) *Public interest.* The Commissioner shall reduce or waive the fees described in paragraph (d)(1) of this section if the Commissioner determines that furnishing copies of, searching for, or making deletions from any written determination or background file document primarily benefits the general public, as described in § 601.702(f)(2)(ii)(B) of this chapter.

(ii) *Previous requests.* The Commissioner may waive the fees described in paragraph (d)(1) of this section for searching for any written determination or background file document if the search for such written determination or background file document was made pursuant to a previous request for inspection thereof. The Commissioner shall waive the fees described in paragraph (d)(1) of this section for making deletions from any written determination or background file document if the making of such deletions from such written determination or background file document was made pursuant to a previous request for inspection thereof. Nothing in this (d)(2)(ii) shall prevent the Commissioner from prescribing fees for making additional deletions from such written determination or background file document pursuant to § 301.6110-5(b).

[T.D. 7524, 42 FR 63417, Dec. 16, 1977]

§ 301.6111-1T Questions and answers relating to tax shelter registration.

The following questions and answers relate to the tax shelter registration requirements of section 6111 of the Internal Revenue Code of 1954, as added by section 141(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 678).

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